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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,729	12/29/2003	Frederick J. Kiko	EXCEL.016RECI	1310
27299	7590	07/01/2005	EXAMINER	
GAZDZINSKI & ASSOCIATES			TIEU, BINH KIEN	
11440 WEST BERNARDO COURT, SUITE 375				
SAN DIEGO, CA 92127			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/748,729	KIKO, FREDERICK J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BINH K. TIEU	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 06/20/05.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 18-24, 26-39 and 41-48 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 18-24, 26-39, 41-48 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### *Reissue Applications*

1. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The reissue oath/declaration filed with this application is defective because it fails to contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is wholly or partly inoperative or invalid. See 37 CFR 1.175(a)(1) and see MPEP § 1414. The Supplement Oath/Declaration fails to specifically identify a single word, phase, or/and expression in an original claim as a description of an error or errors, and how it renders the original patent wholly or partly inoperative or invalid.

According to the Applicant's Supplement Oath/Declaration, the Applicant stated that "...the original prosecuting attorney did not appreciate the full breath of the invention with respect to the prior art, and therefore claimed too narrowly..." or "the by reason of the patentee claiming more or less than he had the right to claim in the patent". However, nowhere in the Oath/Declaration stated a specific error or errors, which made the original patent wholly or partly inoperative or invalid as required and/or stated under 37 CFR 1.175(a)(1) and MPEP § 1414. The specific error or errors has/have to be specific with respect to the one error that the Applicant relies upon for the reissue.

It is further noticed that it is not sufficient for an oath/declaration to merely state, "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure." Rather, the oath/declaration must specifically identify an error. In

addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. Denied, 484 U.S. 894 (1987). Any error or errors such as a single word, phase, or/and expression in the original claims must be identified by reference to the specific claims and the specific claim language wherein lies the error. [Emphasis added]

2. Claims 18-24, 26-39 and 41-48 are rejected as being based upon a defective reissue Oath/Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) defective error(s) in the reissue Oath/Declaration is set forth in the discussion above in this Office action.

#### *Response to Arguments*

3. In response to the Applicant's argument stated under header "*Amendments to claims*" on page 14, wherein the Applicant stated as followings:

"...Applicant respectfully notes that this appears to be a misinterpretation of 37 C.F.R. 1.173 (Nov. 22, 2004 Revision), the relevant portion reproduced below:

"2) Claims. An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression "amended, " "twice amended, " etc., should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) of this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text of the claim." {Emphasis added}"

In response to the Applicant's argument above and because of argument directly concerning to case law, the Examiner has presented such argument to the "Panel of Reissue" members for review and response.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binh K. Tieu whose telephone number is (571) 272-7510 and E-mail address: [BINH.TIEU@USPTO.GOV](mailto:BINH.TIEU@USPTO.GOV).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Curtis Kuntz, can be reached on (571) 272-7499 and **IF PAPER HAS BEEN MISSED FROM THIS OFFICIAL ACTION PACKAGE, PLEASE CALL Customer Service at (703) 306-0377 FOR THE SUBSTITUTIONS OR COPIES.**

Any response to this action should be mailed to:

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Or faxed to:

(571) 273-8300

Hand Carry Deliveries to:

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In formation regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BINH TIEU  
PRIMARY EXAMINER

Art Unit 2643

Date: June 27, 2005